



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: BARBERICH *et al.*

Application No: 09/527,844

Group Art Unit: 1617

Filed: March 17, 2000

Examiner: S. Sharareh

For: METHODS FOR THE TREATMENT
OF NEUROLEPTIC AND RELATED
DISORDERS USING ZIPRASIDONE
METABOLITES

Attorney Docket No.: 4821-334

*For Purposes
Only*

REPLY BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to the provisions of 37 C.F.R. §§ 1.193(b), Appellants submit herewith a Reply Brief in response to the Examiner's Answer ("the Answer") mailed June 30, 2004.

I. Response to the Examiner's Arguments

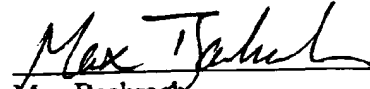
A. Claims 1-4 and 6-9 Are Not Anticipated by Davis

In the Answer, the Examiner maintains the rejection of claims 1-4 and 6-9 as allegedly anticipated by the abstract of Davis *et al.*, *CNS Drugs*, 8(2): 153-159 (1997) ("Davis"). In response to Appellants' argument that the Examiner's construction of the term "administration" is incorrect and directly contrary to the well-accepted meaning of the term, the Examiner: 1) repeats that the administration of a ziprasidone metabolite is inherent in the administration of ziprasidone itself; 2) characterizes the claims as "product-by-process" claims, and alleges that such product-by-process claims are not patentable in this case; and 3) alleges that *Schering Corp. v. Geneva Pharmaceuticals, Inc.*, 339 F.3d 1373 (Fed. Cir. 2003) is not applicable in this case, based on his own interpretation of *Schering*. Appellants submit that none of these allegations are founded on any legal or scientific principles.

No fee is believed due for the submission of this paper. However, if any fees are required for the submission of this paper or to avoid abandonment of this application, please charge such fees to Jones Day Deposit Account No. 503013.

Respectfully Submitted,

Date: August 31, 2004


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